IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPEAL NO. 1543 OF 2004

Mohammad Yusuf Hamidulla Ansari
R/o 513/3, 3rd floor, Fayyaz Seth ki
Bldg., Bala Compound, 4th Nizampura,
Bhiwandi, Dist. Thane. .....Appellant

V/s.

The State of Maharashtra and another ....Respondents

Mr. S. V. Kotwal i/b Mr. P. P. Runwal Advocate for Appellant
Mr. H. J. Dedhia APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : DECEMBER 4, 2015.

JUDGMENT:

Heard. Appellant herein is convicted for offence punishable under section 7 of Prevention of Corruption Act, 1988 and is sentenced to suffer imprisonment for two years and fine of Rs. 5000/- i.d. to suffer further rigorous imprisonment for six months, he is also convicted for offence punishable under section 13 (1) (d) r/w 13 (2) of Prevention of Corruption Act, 1988 and sentenced to suffer imprisonment for one year and fine of Rs. 5000/- i.d. to suffer further imprisonment for six months in Special Case No.

33 of 2001 by Special Judge (Prevention of Corruption Act) vide Judgment and Order dated 09/12/2004. Hence, this appeal.

2) Such of the facts necessary for the decision of this appeal are as follows:

3) On 06/06/2001 one Vijaysing Patil resident of Bhiwandi approached the office of Anti Corruption Bureau and lodged a report that he is the original resident of Buldhana. That in his residential house at Bhiwandi, house no. 834 he also runs a powerloom factory. The said powerloom factory is run in the name of his wife. The electricity meter is installed in the name of the brother. However, the business is run by him. He has specifically stated in the report that he pays the bill regularly. Earlier there was a meter of 18 H.P. Capacity. That sometime on 09/10 of May 2001 he had approached Junior Engineer (present appellant) and requested him to increase the capacity of his electricity meter to 20 H.P. On 25/04/2001 complainant had received the bill. It was incorrectly shown in the said bill that the capacity of the meter was 75 H.P. That it was exceeding his demand of 25 H.P. The bill was exorbitant. On 31/05/2001 at about 2.30 p.m., he

had again contacted Sub Engineer and requested him to reduce the bill. At that time, Sub Engineer i.e. present appellant had asked him to come to the hotel Utsav. Complainant had obliged. He had gone along with his friend Raosaheb Gavkare to hotel Utsav. They met Sub Engineer in hotel Utsav. Complainant had informed Sub Engineer that he has received an exorbitant bill. At that stage, it is alleged that Sub Engineer had informed the complainant that he would reduce the bill as well as the load of the electricity meter, only if he is paid Rs. 5000/-. Complainant had agreed. On 05/06/2001, at about 1.00 p.m. he had allegedly called upon Sub Engineer on his office landline number. He had asked Sub Engineer as to when he would reduce the bill. At that stage also Sub Engineer had informed him that the work would be done only upon payment of Rs. 5000/-. It is also alleged in the report that Sub Engineer had informed the complainant that he was to visit hotel Utsav on the next day and that he should pay the amount of Rs. 5000 on the next day. Since the complainant did not wish to pay the illegal gratification as demanded by accused Sub Engineer, he approached office of Anti Corruption Bureau and lodged a report.

4) Upon receipt of the said report, Dy.S.P., A.C.B. had called upon two public servants from Minor Irrigation Department and had requested them to act as panchas at the time of trap. They had obliged. Office of A.C.B. had recorded pre-trap panchanama. It was decided that the raid would be conducted on 06/06/2001 at hotel Utsav. Accordingly raiding party along with complainant had been to hotel Utsav on 06/06/2001. At about 4.00 p.m. Sub Engineer had arrived at hotel Utsav. At that time, according to the prosecution accused Sub Engineer had accepted the amount of Rs. 5000/-. Upon receipt of signal from the original complainant, office had apprehended the accused. Post-trap panchanama was recorded. Traces of anthracene powder were found in the inner pant pocket of the left hand side of the accused. After the post-trap panchanama, Dy.S.P. A.C.B. had lodged a report at the police station on the basis of which crime no. 76 of 2001 was registered against the accused for offence punishable under section 7 & 13 (1) (d) r/w 13 (2) of Prevention of Corruption Act, 1988. In the course of investigation, A.C.B. had sent papers to M.S.E.B. office for seeking sanction to prosecute. Sanction was accorded. Hence, charge-

sheet was filed. Case was registered as Special Case No. 33 of 2001. Prosecution examined 4 witnesses to bring home the guilt of the accused.

5) P. W. 1 Vijaysing Patil was the aggrieved person to whom present appellant had demanded illegal gratification. P. W. 1 Vijaysing Patil has deposed before the Court that on 05/06/2001 he had lodged a report as the accused had demanded Rs. 5000/- for reducing electricity bill. He was called to the police station of Anti Corruption Bureau on the next day i.e. 06/06/2001. He went to the office of A.C.B. at 10.30 a.m. His complaint was recorded. Two public servants were called. Complainant has further deposed before the court that on 06/06/2001, he went to hotel Utsav along with panch Jathar. He reached hotel at 3.00 p.m. They were seated in an A.C. room. Dy.S.P. Surve had accompanied Shri. Devde and they were seated on the table next to the table occupied by the complainant. At about 4.00 p.m., accused reached the hotel. Complainant had inquired with him about his work. Accused asked whether he had brought the money. Complainant had stated that he had brought Rs. 5000/-. Accused demanded the money.

Complainant had then given the tainted notes. Accused accepted with right hand and kept it left chest pocket. Soon thereafter, he had given the signal. Surve and Devde immediately caught the accused. Post trap-panchanama was conducted. Complainant has further deposed that electricity bill of the meter is at Exhibit 9. His wife Kamal had given him general power of attorney to conduct the affairs of the factory. His brother had also executed power of attorney in his favour in respect of meter connections. Application given by the brother for increasing the capacity of the meter is at Exhibit 10. In the cross-examination P. W. 1 has specifically admitted as follows:

> "That there were two electric meters. One meter was temporarily disconnected."

6) He used to receive minimum charges bill. On 12/12/2000, he had filed an application to disconnect the said meter permanently, thereupon the said meter was permanently disconnected. He was not receiving the bill as per H.P. but as per units consumed. He had also admitted that the application which is at Exhibit 10 was addressed to the Deputy Executive Engineer. He has evaded to answer as to whether

the accused had visited his factory premises for inspection on 30/04/2001. He has admitted the signature of his brother Jahal Singh at Exhibit 11.

7) P. W. 1 has admitted in the cross-examination that on 16/05/2001, flying squad of M.S.E.B. had conducted raid at his factory. Upon perusal of document i.e. report of the flying squad which conducted the inspection on 16/05/2001, it is clear that accused was a member of the flying squad and had accordingly signed on the inspection report. Report would clearly show that flying squad had noticed that there is a theft of electricity in the factory premises of the complainant. P. W. 1 has admitted in the cross-examination that flying squad had filed a report that P. W. 1 has committed theft of electricity worth Rs. 2,00,000/-. A complaint was filed against him. He was prosecuted under Indian Electricity Act. Brother of P. W. 1 was prosecuted in C.R. No. 56 of 2001 as the meter was installed in the name of his brother. P. W. 1 has evaded to answer as to whether a bill of Rs. 3,00,000/- was outstanding against him. It is also admitted that before 24/05/2001 P. W. 1 had no direct conversation with the accused.

Witness has categorically admitted in the cross-examination that after 31/05/2001 he had directly met accused on 06/06/2001. It is pertinent to note that P. W. 1 has further deposed before the court that he had not disclosed the name of the accused when he lodged first report to the A.C.B. That he had not given the details. His evidence further indicate that when he approached office of A.C.B. of 05/06/2001 his complaint was not reduced into writing. The witness has ascertained that his friend Raosaheb was with him. He was sitting opposite to him. Panch Jathar was seated by his side and that Devde and Surve were at adjacent table. Accused was seated next to Gavkare. Witness was confronted with his supplementary statement. He has deposed that he had stated in his supplementary statement that accused asked him whether he brought the money, however, it is not mentioned in the supplementary statement.

8) Report lodged by P.W. 1 on 06/06/2001 would show that according to him on 05/06/2001, he had made a telephonic call to the accused and he was called at hotel Utsav along with Rs. 5000/-. However, in his deposition before the court, he has specifically stated

that after 31/05/2001, he had not met the accused. In his substantive evidence, there is no reference to the demand on 05/06/2001.

9) P. W. 2 Anil Deshkar is sanctioning authority. At the relevant time, he was serving as joint secretary (Technical) M.S.E.B. He has deposed before the court that he had received investigation papers of crime no. 76 of 2001 registered at Shanti Nagar Police Station from the office of M.S.E.B. seeking sanction to prosecute Sub Engineer. He had gone through the papers of investigation and arrived at a conclusion that there were sufficient grounds for according sanction and therefore sanction was accorded. Sanction order dated 12/08/2001 is on record. P. W. 2 upon being confronted with the same has admitted his signature and the contents at Exhibit 15. At this juncture, it would be significant to know that Exhibit 15 is a draft sanction order dated 12/11/2001. In the cross-examination, he has admitted that he would not be able to tell the details of the paper received by him. He had prepared note. He had not dictated the sanction order. He had sent the papers of investigation to the Disciplinary Cell of his office and informed the Disciplinary Cell that sanction was to be accorded. The Disciplinary Cell

typed the sanction order and forwarded it. It is elicited that draft sanction is not in the sanction file. Upon perusal of the original record and proceeding, it appears that Exhibit 16 is the forwarded letter to the office of A.C.B. after the sanction was accorded by P. W. 2. He has admitted that investigation papers were with him for more than one month. In the substantive evidence, according to P. W. 2, the sanction was accorded on 12/08/2001. Exhibit 15 is the draft sanction dated 12/11/2001. Upon perusal of Exhibit 16, it is clear that there is no reference to 12/08/2001. The reference shown in the forwarding letter Exhibit 16 is reference letter dated 29/10/2001.

10) In view of the above anomaly, it can be safely inferred that Special Court had taken cognizance in the absence of a valid sanction. The fact that, Exhibit 15 is a draft sanction order would clearly indicate that there is no application of mind by the sanctioning authority. Sanctioning authority had simply filled in the blanks in the draft sanction order. It is clear that office of M.S.E.B. had accorded sanction for prosecution without there being any subjective satisfaction of the Sanctioning Authority.

11) In the case of **Mohd. Iqbal, Ahmad V. State of Andhra Pradesh (1979 A.I.R. 677)** The Hon'ble Apex Court has held that :

> “The grant of sanction is not an idle formality but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions and must therefore be strictly complied with before any prosecution could be launched against public servants.”

12) P. W. 3 is Sunil Jathar a public servant who had acted as panch at the time of raid. He has deposed before the court that on 06/06/2001, they had been to hotel Utsav. He has specifically deposed that officer Surve was also present on the adjacent bench. Some other officer had also taken positions. At about 3.45 p.m., Yusuf Ansari had entered the hotel. He had occupied the bench in front of the complainant on the same table. As far as the actual narration of incident is concerned, P. W. 3 has deposed before the court that complainant had asked the accused what happened about his work and further had told him that he had brought money as told. Accused had told P.W. 1 that he may give money after the work or even at that time. Complainant had told accused that

he has brought money and further asked him to accept the money and thereafter accused had accepted the money. It is pertinent to note that narration given by the independent witness P. W. 3 finds place in the post-trap panchanama as well. It is further pertinent to note that P. W. 3 has denied the presence of Gavkare along with the complainant. It is admitted in the cross-examination that accused did not voluntarily demand the money. Complainant had volunteered that he had brought the money. He has further deposed that the complainant had contacted the accused on phone once. However, he would not be able to tell the text of the conversation on the phone. P. W. 3 has further ascertained that accused had not counted the notes. He accepted the notes with left hand and kept the same in his pocket. He has also admitted that accused did not keep the money in chest pocket and he had not accepted the money with the right hand. This portion of his deposition is in contradiction with evidence of P. W. 1 as far as acceptance of amount by left hand is concerned. P. W. 3 has categorically admitted before the court that it is correct that the accused did not voluntarily demand money. Complainant on his own told that the money was brought. Complainant contacted the accused on phone once. This would clearly show that there was no demand prior to acceptance. Demand is *Syne qua non* to acceptance.

13) The Hon'ble Apex Court in the case of **P. Satyanarayana Murthy V. Dist. Inspector of Police and another (2015 AIR SCW 5263)** has held that:

> “The proof of demand of illegal gratification, is the gravamen of the offence under Ss.7 and 13 (1) (d) (i) & (ii) and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Ss. 7 or 13 of the Act would not entail his conviction thereunder.”

The prosecution in the instant case has not been able to prove the factum of demand beyond reasonable doubt. Even if the evidence of panch witness is accepted on the face value, it falls short of the quality and decisiveness of the proof of demand of illegal

> gratification as enjoined by law to hold that the offence under Ss. 7 or 13 (1) (d) (I) & (ii) of Act has been proved. Thus to hold on the basis of the evidence on record that the culpability of the accused, appellant under Ss. 7 and 13 (1) (d) (i) & (ii) has been proved, would be an inferential deduction which is impermissible in law."

14) In short acceptance of gratification has to be preceded by demand. The original complainant had stated that he had brought the amount.

15) P. W. 4 Kedu Devde was officiating as Dy.S.P. A.C.B. at the relevant time. He has deposed before the Court that on 06/06/2001 – Patil had approached office of A.C.B. and set the law into motion. A trap was arranged in accordance with law. P. W. 4 has feigned ignorance about the presence of Gavkare. He has also feigned ignorance as to whether flying squad of M.S.E.B. had conducted the raid on the power loom factory of the complainant. He has admitted that statement of Deputy Engineer of M.S.E.B. was recorded.

16) Evidence on record would show that on 15/05/2001 Director of V & S, M.S.E.B. Mumbai had informed the Deputy Executive Engineer

flying squad Kalyan that it has been decided for checking all consumers for two days with effect from 16/05/2001 to 17/05/2001 by deploying flying squads at various places. Shri. P. R. Ganaji Executive Engineer Enforcement was directed to act as in charge of the special drive. On 18/05/2001, Executive Engineer was informed that there has been theft of electricity and crime no. 56 of 2001 is registered against Shri. Chahalsingh Ramsing (Rajput Patil) i.e. brother of complainant Vijay Singh Patil. On 16/05/2001, present appellant was a member of flying squad and there is documentary evidence to that effect.

17) F.I.R. lodged by P. W. 4 would also show that complainant had informed accused/appellant that he has brought the amount. Upon that appellant had asked the complainant to pay the amount or to pay the same subsequently. Learned counsel for the appellant has rightly submitted that in th is background, it needs to be appreciated as to whether the amount which was being given was towards the arrears of the bill or illegal gratification.

18) Section 20 of Prevention of Corruption Act, 1988 contemplates:

20. Presumption where public servant accepts gratification

other than legal remuneration

(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be Inadequate.

(2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-section (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn."

19) It is true that once the bribe is accepted, it becomes incumbent upon the Court to draw the presumption under section 20 of the Prevention of Corruption Act, 1988. The onus then shifts upon the accused to rebut the presumption. The degree of proof may not be as the one which is cast upon the prosecution. It is sufficient for the accused to present before the Court the preponderance of probabilities in order to discharge the onus cast upon him. In the present case, defence of the accused under section 313 of Code of Criminal Procedure, 1973 is as follows:

"The complainant was consuming electricity clandestinely. On visit to his factory, I noticed it and made report to my office. So he was annoyed. His request to reduce the load was refused by me. I had no authority to reduce the load. The bill received by him was correct as per electricity consumed. He paid the bill 29th May. Prior to it, on 16/05/2001 flying squad of M.S.E.B.

conducted raid at his factory and found about illegal consumption. The complainant was prosecuted for theft of electricity. Flying squad issued bill to him. He applied for permitting him to pay 20% of it and requested to restore electricity. He paid that bill. He was in arrears. On 2nd June I received phone call. The caller told me that he was Subramaniam, Secretary of Chief Minister. He asked me to reduce the bill of the complainant or to face dire consequences. I answered him that I will inform to my superior officer as I had no authority to reduce the bill. Accordingly, I informed my superior on phone and by letter. On 6th June, I received phone call from the complainant. He invited me for lunch. I was busy in work and I refused.

But he told me that my superior was with him. So after completing my work, I went to him. My superior was not there. The complainant told me that officer left recently and I was asked to wait there. I was hungry. The complainant ordered juice. That time I sensed something in left pocket of pant. Raosaheb Gavkare, a friend of the complainant was seated next to me. I put hand inside the left pocket. That time I was caught. I am falsely involved. I am filing some documents with list."

20) In view of this defence, it can be safely said that accused has

discharged the onus cast upon him. The prosecution has miserably failed to establish the demand and acceptance of illegal gratification by the accused.

21) In the case of **K. S. Panduranga Vs State of Karnataka (2013 (3) S.C.C. 721)** The Hon'ble Apex Court has held that:

> "When some explanation is offered, the court is obliged to consider the explanation under Section 20 of the Act and the consideration of the explanation has to be on the touchstone of preponderance of probability."

22) In the present case, accused has brought documentary evidence on record to show that appellant was a member of the flying squad of M.S.E.B. On 16/05/2001. The Secretary of Chief Minister Mr. Subramaniam had personally called upon the accused/appellant and informed him to reduce the bill of the complainant or to face dire consequences. Appellant had informed him that he had no authority to reduce the bill. On 06/06/2001, appellant was misled by informing him that the complainant was in the company of the superior and he has called upon him and therefore appellant had been to hotel Utsav to meet the complainant. Prosecution has failed to explain the presence of

Surve at the time of raid. The question is whether he was a member of the raiding party. Mr. Surve was also Dy.S.P. Raid was arranged by Dy.S.P. Devde who was officiating as Dy.S.P. of A.C.B. at the relevant time. Learned counsel for the appellant rightly submits that appellant herein had received a threat of dire consequences from Secretary of Chief Minister of Maharashtra and therefore, it is abundantly clear from the nature of evidence adduced by the prosecution that the appellant has been falsely implicated. Prosecution has failed to establish the guilt of the accused beyond reasonable doubt.

23) Hence, the appeal deserves to be allowed.

O R D E R

(i) Appeal is allowed.

(ii) The Judgment and Order dated 09/12/2004 passed by Special Judge, (Prevention of Corruption Act), Thane in Special Case No. 33 of 2001 is hereby quashed and set aside.

(iii) Appellant is acquitted of all the charges levelled against him.

(iv) Fine amount, if paid be refunded to the appellant.

(v) Bail bonds of the appellant stand cancelled.

(vi) Appeal stands disposed of.

(SMT. SADHANA S. JADHAV, J.)